

## **REMARKS**

Claims 1-16 are pending in the application.

The applicants gratefully acknowledge the courtesy extended by Examiner Shumaya Ali and Examiner Teena Mitchell for the interview conducted at the Patent Office on April 13, 2006 with applicant Valerie Armstead and the applicants' representative.

### **Substance of Interview**

During the interview of April 13, 2006, a variety of airways were demonstrated. The demonstration of the airways was made in support of applicants' position that the endotracheal intubation device of U.S. Pat. Pub. No. 2002/0108610 (Christopher), which is adapted to engage the epiglottis, lacks relevance to the claimed oropharyngeal airway of the present application, which is adapted such that the distal end of the airway is located within the pharynx at a distance from the epiglottis. The applicants' argued that Christopher fails to disclose or suggest the claimed oropharyngeal airway. The Examiners found the applicants' arguments persuasive and agreed that Christopher is not readable on the claims of the present application.

During the interview of April 13, 2006, the Examiners provided the applicants with copies of U.S. Pat. Nos. 2,127,215 (Gwathmey), 3,756,244 (Kinnear), 4,919,126 (Baildon), and 5,287,848 (Cubb).

## **ARGUMENTS**

### **I. Rejections Based on Christopher**

Claims 1-7, 11-12, 14, and 16 are rejected under 35 U.S.C. 103(a) as being obvious based on U.S. Pat. Pub. No. 2002/0108610 (Christopher). Claim 1 recites an oropharyngeal airway comprising a body having proximal and distal ends and sized such that when the distal end of the body is inserted into the mouth of the patient until the proximal end is disposed outside and adjacent to the patient's mouth, the distal end is disposed within the pharynx above the epiglottis and at a distance from the epiglottis. Claim 1 also recites at least one channel forming an airway, at least one first conduit for conveying inhalant gas, at least one

second conduit for suctioning, and at least one third conduit for sampling exhaled gas. The channel and the first and second conduits extend between the proximal and distal end. The third conduit terminates at a position in the airway channel of the body.

As described above, the rejection of claims of the present application based on Christopher was discussed during the interview of April 13, 2006. As was demonstrated by the applicants during the interview of April 13, 2006, the endotracheal intubation devices of Christopher, adapted to engage the epiglottis, lack relevance to oropharyngeal airways having distal ends located within the pharynx at a distance from the epiglottis. As acknowledged by the Examiners, Christopher is not readable on the claims of the present application.

For the foregoing reasons, claims 1-7, 11-12, 14, and 16 are not rendered obvious based on Christopher. The applicants respectfully request that the rejection of claims 1-7, 11-12, 14 and 16 as obvious under 35 U.S.C. 103(a) based on Christopher be withdrawn.

Claim 13 is rejected under 35 U.S.C. 103(a) as obvious based on Christopher and U.S. Pat. No. 3,756,244 (Kinnear). Claim 13 depends from claim 1, discussed above, and recites a flange at the proximal end of the device for preventing the proximal end of the device body from entering the mouth.

Kinnear was cited by the Examiner for the purpose of showing an airway (10) having a flange (16). See page 4 of the office action of August 11, 2005 for the rejection incorporated by the Examiner into the final office action of December 28, 2005.

Again, as demonstrated by applicants during the interview of April 13, 2006, the endotracheal intubation device of Christopher, which is adapted to engage the epiglottis, lacks relevance to airways such as the oropharyngeal airway of the present application having distal ends located within the pharynx at a distance from the epiglottis. The teachings of Christopher relating to endotracheal intubation devices are not properly combined with the teachings of Kinnear relating to airways.

For the foregoing reasons, claim 13 is not obvious based on Christopher and Kinnear. The applicants respectfully request that the rejection of claim 13 as obvious under 35 U.S.C. 103(a) based on Christopher and Kinnear be withdrawn.

## **II. Prior Rejections Under 35 U.S.C. 112**

The final action of December 28, 2005 did not include treatment of claims 8, 10, and 15, previously rejected under 35 U.S.C. 112 in the office action of August 11, 2005. It is believed that this rejection was addressed in applicants' response to the office action of August 11, 2005. Applicants respectfully request that the rejection of claims 8, 10, and 15 under 35 U.S.C. 112 be withdrawn.

## **III. Other References**

As described above, the applicants were provided with copies of U.S. Pat. Nos. 2,127,215 (Gwathmey), 3,756,244 (Kinnear), 4,919,126 (Baildon), and 5,287,848 (Cubb) during the interview of April 13, 2006.

Gwathmey discloses a respiratory device having upper and lower sections (10, 11). The upper and lower sections (10, 11) are hingedly connected at the proximal end such that the respiratory device is adapted to function like a speculum for movement between a contracted adjacent position (Fig. 2) and a separated position (Figs. 1 and 3). The device includes a gas delivery conduit (20) and a suctioning conduit (22) respectively extending along the upper and lower sections (10, 11).

Kinnear discloses an airway (10) including a body having a curved lower portion (12) and an upper neck portion (14). The body portions (12, 14) are hollow to respectively define central passageways (30, 52). The airway includes ribs (24, 25, 26, 27) extending along the body portion (14) and guidingly receiving a catheter (32). The airway includes a flange (16) at a proximal end.

Baildon discloses airways made from a flexible plastic material, preferably a material having a durometer rating between about 10 to 40 (col. 4, lines 60 to 63). In one embodiment, a relative large single passageway (23, Fig. 5A) is provided for passage of air through the airway. In other embodiments, multiple smaller passageways (53, Fig. 9A; 92, Fig. 12B; 123, Fig. 15A, 160, Fig. 18B) rather than a single larger passageway are included to provide for passage of air through the airway. The airways include an epiglottis elevator (32, Fig. 4) at a distal end of the airway adapted to engage the epiglottis.

Cubb discloses an endotracheal intubation device that “enter[s] the human larynx area and passes the roof of the mouth 29, the epiglottis 27, the vocal chords 28, and into the larynx and trachea 26.” (Col. 4, lines 5 to 9). The device includes a guide defining a channel (32) for receiving an endotracheal tube (51). The guide includes a channel (33) for suctioning. The guide also includes fiberoptics (43) in a channel (30) to transmit light or to carry images to an eyepiece (34).


The airway references (Gwathmey, Kinnear, Baildon, Cubb) fail to disclose or suggest an airway having a body defining each of at least one airway channel for passage of air through the body, at least one first conduit for conveying inhalant gas, at least one second conduit for suctioning, and at least one third conduit terminating at a position in the airway channel for sampling exhaled gas of a patient, as required by claim 1. Further, these airway references do not disclose or suggest the claimed combination in which the third conduit for sampling gas terminates at a position corresponding to the patient’s mouth (claim 5), or that terminates at a position that is within the two-thirds of a body length closest to the proximal end (claim 6).

It is only through impermissible hindsight use of applicants’ disclosure that the necessary teaching of the claimed invention can be supplied.

It is submitted that the application is now in condition for allowance. If the Examiner believes that direct communication would advance prosecution, the Examiner is invited to telephone the undersigned.

Respectfully submitted,

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